

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

JANUARY TERM, 1914.

No. 2610.

76

CHANCEY O. HOWARD, APPELLANT,

vs.

CHARLES J. CASSIDY COMPANY, INC., A CORPORATION.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED OCTOBER 13, 1913.

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C. J.

Court of Appeals of the District of Columbia.

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APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
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In the Court of Appeals of the District of Columbia.

No. 2610.

CHANCEY O. HOWARD, Appellant,
vs.
CHARLES J. CASSIDY COMPANY, INC., a Corporation.

a Supreme Court of the District of Columbia.

In Equity. No. 31454.

THE CHAS. J. CASSIDY COMPANY, INC., a Corporation, Plaintiff,
vs.
THE GETTYSBURG BATTLE PICTURE ASSOCIATION, a Corporation,
Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

1 In the Supreme Court of the District of Columbia.

No. 31454.

THE CHAS. J. CASSIDY COMPANY, INC., a Corporation, Plaintiff,
vs.
THE GETTYSBURG BATTLE PICTURE ASSOCIATION, a Corporation,
Defendant.

Memoranda.

December 5, 1912.—Original Bill, filed.

December 11, 1912.—Rule to Show Cause against Chancey O. Howard, issued.

December 16, 1912.—Answer of E. D. Turnure to Rule, filed.

Order Referring Cause to Auditor.

Filed December 17th, 1912.

* * * * *

This cause coming on to be heard upon the petition of the receiver and the answers thereto of Gurno Scott, Edward D. Turnure and Chancey O. Howard, it is by the Court this 17th day of December, 1912, Ordered that this cause be and the same is hereby referred to the Auditor, to ascertain and report to this Court as to the disposition of the assets of the defendant corporation, and by whom and to whom the same were disposed of; and the cause is hereby continued under the rule to show cause until the report of the Auditor.

JOB BARNARD, *Justice.**Supplemental Bill.*

Filed January 18th, 1913.

* * * * *

Leave of the Court first had and obtained, the plaintiff hereby makes Chancey O. Howard, a citizen of the United States and a resident of the District of Columbia, and the Auto Delivery Company, a corporation doing business in the District of Columbia, parties defendant to this cause and files this, its supplemental bill respectfully showing to the Court as follows:

3 The plaintiff heretofore on the 5th day of December, 1912, filed herein its bill of complaint against the Gettysburg Battle Picture Association, a corporation, in which it charged, as a creditor of the corporation, among other things, that the affairs of the defendant corporation, The Gettysburg Battle Picture Association, had been grossly mismanaged; that it was insolvent and unable to pay its indebtedness; and that because of internal dissension and disputes its affairs could no longer be properly managed and administered, and prayed for the appointment of a receiver of its affairs in the District of Columbia, all of which more fully appears by reference to said bill of complaint which is prayed to be taken and read as a part hereof. On the said 5th day of December, 1912, a receiver was appointed by this Court for said defendant corporation and thereafter in equity Cause No. 31437 a receiver was appointed for the defendant, Auto Delivery Company, as will more fully appear by reference to the proceedings in said cause, and by order of this Court passed in this cause on the — day of December, 1912, said cause was referred to the Auditor of this Court to ascertain and report what disposition had been made of the property and funds of the defendant corporation, The Gettysburg Battle Picture Association, as will more fully appear by reference to said order and in pursuance of said order said cause is now in the hands of said Auditor.

The plaintiff is advised and believes that practically all of the

monies of the defendant corporation, The Gettysburg Battle Picture Association, have been wrongfully and improperly misappropriated and disposed of and says and avers that the affairs of said corporation up to the time of its insolvency had been managed and controlled by the defendant, Chancey O. Howard, who was treasurer thereof and director therein; that the defendant, Auto Delivery Company, was also under the exclusive control of the defendant, Howard, who was an officer and director therein; that the defendant, Howard, improperly and unlawfully caused large sums of the monies of the defendant, The Gettysburg Battle Picture Association, to be diverted and appropriated to his own use and other large sums to be appropriated and diverted to the use of the Auto Delivery Co., over which he was exercising exclusive control; and that of the money so wrongfully turned over to the Auto Delivery Company, part was used for the payment of its expenses and a large part thereof was invested in property and machinery in the name of and for the account of said Auto Delivery Company.

The plaintiff is advised and believes that the said Howard and that the said Auto Delivery Company ought to be required to account for all monies so wrongfully diverted and misappropriated and that the property or proceeds of property of the Auto Delivery Company, which was purchased with the funds of the said Gettysburg Battle Picture Association ought to be accounted for and turned over to the receiver of said Gettysburg Battle Picture Association.

Wherefore, the premises considered, the plaintiff prays:

1. That the process of this Court may issue to the defendants, Chancey O. Howard and the Auto Delivery Company, requiring them to appear and answer the allegations of this bill, answer under oath, however, being waived.

2. That the said Howard and said Auto Delivery Company may be required to account for any and all monies received from the Gettysburg Battle Picture Association and that they may be required to pay and turn over the same.

3. That the property or the proceeds of property held in the name of the Auto Delivery Company and purchased with the monies of the Gettysburg Battle Picture Association may be turned over to the receiver of the Gettysburg Battle Picture Association.

4. That a judgment may be decreed in favor of the Gettysburg Battle Picture Association or its receiver against the said Chancey O. Howard, for such sums as may be found to be due from him to said Association or its receiver.

5. That, if deemed advisable, Equity Cause 31437 in which the Gettysburg Battle Picture Association, et al., are plaintiffs and the Auto Delivery Company is defendant, may be consolidated with this cause.

And for such other and further relief as to the Court may seem necessary and proper.

THE CHAS. J. CASSIDY COMPANY, INC.,
By CHARLES J. CASSIDY, *President*.

I, Charles J. Cassidy, on oath state that I have read the foregoing bill by me subscribed as President of the Chas. J. Cassidy Company, Inc. and know the contents thereof; the matters and things therein stated as of my own personal knowledge are true and those stated upon information and belief I believe to be true.

CHARLES J. CASSIDY.

Subscribed and sworn to before me this 17th day of January, A. D. 1913.

[SEAL.]

C. COLDEN MILLER,
Notary Public, D. C.

6

Answer of Chancey O. Howard.

Filed February 11th, 1913.

* * * * *

The defendant, Chancey O. Howard, for answer to so much of the supplemental bill filed herein as he is advised it is necessary for him to answer, answering says:

First. That this defendant, not having been a defendant to the original bill, could not question the appointment of a receiver in this cause; that he has been advised and informed that the receiver in this cause was improperly appointed without knowledge on the part of the court of the actual conditions which this defendant is advised and informed existed at the time of the filing of the original bill and this defendant is advised and informed that the following conditions existed.

That at the time of the filing of the original bill in this cause this defendant was a director in the defendant corporation and that a meeting of the Board of Directors was supposed to have been held on the 4th day of December 1912 and that this defendant as such director was lawfully entitled to a notice of said meeting but that he received no notice of such meeting, nor did he waive such notice; and he is advised and informed that certain of the directors of the defendant company without consulting with or advising this defendant as to the objects of such meeting met together on the 4th day of December 1912 and passed the resolution appended to the

7 original bill filed herein consenting to a receiver being appointed, and this defendant says that had he been present at such a meeting he would have objected to the appointment of a receiver and he believes that the appointment of a receiver was entirely unnecessary and unwarranted and that the action of the said directors in consenting to a receiver was entirely unnecessary and improper for the reason that said meeting was not properly or legally called and held. This defendant is further advised that the receiver appointed in this cause has not now in his possession and never has had the minutes of such a meeting, and this defendant is further advised and informed that the minutes of the alleged meeting of December 4, 1912, are in the possession or were in the possession shortly after the holding of said meeting of a cer-

tain attorney of Newark, New Jersey, whose name this defendant is advised is George H. Peirce, and this defendant is advised that said minutes should properly be before this court, and that the receiver should be compelled by order of this court to produce said minutes so that the question herein raised as to the legality of such meeting may be properly determined.

Second. This defendant denies that there has been any intentional wrongful appropriation of the moneys of the defendant corporation, but says that at proper meetings of the executive committee having control of said defendant corporation that the corporation from time to time made loans to this defendant, to one E. D. Turnure and one Gurnon R. Scott, and the Auto Delivery Company, a corporation, and that at the time of making these loans the said executive committee, and this defendant, who was a member of said committee, had consulted counsel, George G. Jewell, a member of the District bar, and were by him advised that they could properly make such loans, and this defendant is now advised by his present counsel that said corporation had no right under the law or its charter to make such loans. This defendant, saving and excepting all benefits which he has raised to the appointment of a receiver in this cause and still maintaining that the said receiver has been improperly appointed, says that should the court determine that the receiver is properly appointed he will stand now ready to submit to a judgment in this court against him personally for all such sums of money as were loaned or advanced to this defendant in his personal capacity.

Third. That this cause being now in the hands of the Auditor it has been shown that large sums of money were loaned to Gurnon R. Scott, President of the defendant corporation, and to E. D. Turnure, Secretary of the defendant corporation, and that unless the said Scott and Turnure are made parties defendant to this cause the court will be powerless to make a decree against them requiring them and each of them to pay over the money so loaned or advanced, and this defendant therefore insists that the said Scott and the said Turnure are necessary and proper parties defendant to this cause and should have been so made defendants in the supplemental bill, all of which was known to the plaintiff at the time the supplemental bill herein was filed, and that the action of the plaintiff in failing to make the said Scott and Turnure defendants to this cause was wholly improper.

Fourth. This defendant denies that the defendant corporation up to the time of its insolvency had been managed and controlled by him, but says that the affairs of the said Gettysburg Battle Picture Association were managed and controlled by an executive committee consisting of Gurnon R. Scott, E. D. Turnure, and this defendant, and that every act and thing done in connection with the management and control of the said company was done with the consent, assent and approval of the said executive committee, and that this defendant personally was able to give but little of his time to the affairs of said defendant company for the reason that he was employed by the United States government and his services were occupied in behalf of the government daily from the

hour of 9 o'clock A. M. to 4:30 o'clock P. M., and that he was only in a position and only did actually attend to the affairs connected with the defendant company after his office hours with the exception of some few days when special leave had been granted him, which time he gave wholly to the affairs of the defendant company. And he further avers that the said E. D. Turnure did or was supposed to have given his entire time and attention to the affairs of the defendant corporation and being its Secretary was charged with the duty of keeping full and complete records of all acts done in behalf of the said corporation, but that upon the filing of the records of the defendant company with the auditor it appears that the said Turnure has wholly neglected to keep sufficient and proper records of the affairs of the defendant company. This defendant denies that the affairs of the Auto Delivery Company were under his exclusive control, but alleges and avers that E. D. Turnure was Secretary and Manager of said company, and that but little of the time of this defendant was given to the affairs of the Auto Delivery Company for the reason that the said Turnure was charged with the control and management thereof. This defendant denies that he im-

10 properly and unlawfully caused large sums of money belonging to the Gettysburg Battle Picture Association to be diverted and appropriated either to his own use or to the use of the Auto Delivery Company, but says that whatever money was advanced to this defendant or to the said Auto Delivery Company was advanced with the knowledge, consent, assent and approval of the executive committee, and under advise of the aforesaid George G. Jewell, who was then counsel and attorney for the said Auto Delivery Company, the said Gettysburg Battle Picture Association, and this defendant.

Further answering the said supplemental bill this defendant, saving and excepting all benefits which he has raised as to the appointment of a receiver in this cause and still maintaining that the said receiver has been improperly appointed, says that should the court determine that the receiver is properly appointed, upon advise of counsel he now stands ready to submit to a judgment against him personally for all moneys which were loaned and advanced to him for his own personal use in his personal capacity. And this defendant further claims that all sums of money which were advanced to the said Scott and the said Turnure should be properly chargeable against them personally and individually and that they should therefore be made parties to this suit.

Having answered so much of said bill as he is advised and informed that it is necessary for him to answer he prays to be henceforward dismissed.

CHANCEY O. HOWARD,
Defendant.

_____,
Att'ys for Defendant.

Rule to Show Cause.

Filed May 6th, 1913.

* * * * *

Upon consideration of the petition of the Receiver filed herein this day, it is by the Court this 6th day of May, A. D. 1913, Ordered that the respondents Chancey O. Howard, Gurnon R. Scott and Edward D. Turnure appear herein on Friday, the 9th day of May, 1913, at 10:00 o'clock A. M., and show cause, if any they have, why a decree should not be given against them for judgment as at law for the respective amounts of money improperly received or disposed of by them out of the funds of the Gettysburg Battle Picture Association, as shown by the report of the Auditor heretofore filed in this cause, provided copy of this order be served upon the defendants, or their attorneys of record in this cause on or before the 7th day of May, 1913.

JOB BARNARD, *Justice.*

12

Answer to Rule.

Filed May 9th, 1913.

* * * * *

Now comes the respondents Ed. D. Turnure and Gurnon R. Scott, in answer to the rule to show cause issued out of this Honorable Court on the 2nd day of May, A. D. 1913, and for cause why judgment should not be given against them, respectfully show the following:

1. That the Auditor's report does not show any amount due from said respondents to the plaintiff;
2. That the evidence taken in the above entitled cause does not show an indebtedness from respondents to the plaintiff.
3. That respondents are advised and believe that no judgment could be obtained at law against them.

Wherefore respondents pray that said rule may be dismissed.

ED. D. TURNURE,
GURNON R. SCOTT,
By RALPH E. WALKER,
Att'y for Defts.

13

Decree.

Filed May 20th, 1913.

* * * * *

This cause came on to be further heard at this term and was argued by counsel; thereupon, upon consideration of all and singular the proceedings had herein and it appearing that Chancey O. Howard, Edward D. Turnure and Gurnon R. Scott duly appeared in this cause, answered the petitions filed by the Receiver of the

Gettysburg Battle Picture Association and otherwise took part in the proceedings had herein, and it appearing to the Court that the said Chancey O. Howard, Edward D. Turnure and Gurnon R. Scott have wrongfully taken possession and disposed of monies of the Gettysburg Battle Picture Association, a corporation, as shown by the report of the Auditor heretofore filed and approved in this cause, which monies they have failed and refused to turn over to said Receiver, it is by the Court this 20th day of May, A. D. 1913, adjudged, ordered and decreed, as follows:

That the said Receiver of the Gettysburg Battle Picture Association is entitled to collect and to receive from said Chancey O. Howard the sum of \$5,688.77, from the said Edward D. Turnure the sum of \$771.65 and from the said Gurnon R. Scott the sum of \$105.00, which amounts shall be paid to said Receiver by said Chancey O. Howard, Edward D. Turnure and Gurnon R. Scott respectively and for which amounts the said Receiver shall have judgment as at law from the date of this decree against the said respective parties.

JOB BARNARD, *Justice*.

14 From the foregoing Decree, the defendant C. O. Howard hereby notes, in open Court, an appeal to the Court of Appeals of the District of Columbia and the bond for costs is hereby fixed at one hundred dollars \$100.00.

JOB BARNARD, *Justice*.

Memorandum.

June 13, 1913.—Appeal bond filed.

Assignment of Errors.

Filed July 18, 1913.

* * * * *

The defendant Chancey O. Howard assigns the following errors on appeal in the above entitled cause:

First. The Court erred in entering a final judgment upon the rules to show cause whilst the issues in this case were still pending before the Court.

Second. The Court erred in entering a final decree and judgment upon the face of the whole record at the time said decree was entered.

15 Third. That the Court erred in that the judgment entered was premature and was final and conclusive in its effect, whilst the case was yet undisposed of upon the bill and answer.

WM. J. NEALE,
JAMES M. ENGLAND,

Attorneys for the Defendant Chancey O. Howard.

Designation of Record.

Filed July 18, 1913.

* * * * *

The Clerk of the Supreme Court of the District of Columbia will please include in the record on appeal, in the above entitled cause, the following papers and proceedings:

First. Memorandum of the filing of the original bill of complaint against the Gettysburg Battle Picture Association.

Second. Memorandum of rule issued on said bill against Chancey O. Howard, and memorandum of answer filed to said rule.

Third. Order of reference to Auditor.

Fourth. Supplemental bill of complaint filed January 8th, 1913.

Fifth. Answer of defendant Chancey O. Howard to the supplemental bill, filed February 11th, 1913.

Sixth. Memorandum of filing of Auditor's report.

Seventh. Rule to show cause issued May 6th, 1913.

16 Eighth. Answer of Chancy O. Howard to said rule filed May 9th, 1913.

Ninth. Decree on said rule signed by Mr. Justice Barnard May 20th, 1913.

Tenth. Memorandum of appeal noted in the open Court in writing at the foot of the decree of May 20th, 1913.

Eleventh. Memorandum of order for cost bond.

Twelfth. Memorandum of Bond for cost filed and approved.

Thirteenth. The assignment of error and this designation.

WM. J. NEALE,
JAMES N. ENGLAND,
Attorneys for the Defendant Chancy O. Howard.

Extension of Time.

Filed July 21, 1913.

* * * * *

Upon motion of the defendant Chancy O. Howard, through his counsel and there being no objection raised by the counsel for the plaintiff, it is this 21st day of July, 1913, adjudged, ordered and decreed that the time for filing transcript of record on appeal to the Court of Appeals of the District of Columbia be, and the same is hereby extended to and including the 2nd day of September, A. D., 1913.

By the Court.

ASHLEY M. GOULD, *Justice.*

Bill of Complaint.

Filed December 5th, 1912.

In the Supreme Court of the District of Columbia.

No. 31454.

THE CHAS. J. CASSIDY COMPANY, INC., a Corporation, Plaintiff,
VS.
THE GETTYSBURG BATTLE PICTURE ASSOCIATION, a Corporation,
Defendant.

The plaintiff, The Chas. J. Cassidy Company, Inc., respectfully shows to the Court as follows:

1. It is a corporation organized under the laws of the District of Columbia and brings this suit in its own right.

2. The defendant, The Gettysburg Battle Picture Association, is a corporation organized under the Laws of the State of Pennsylvania, having an office and doing business in the District of Columbia, and is sued in its own right. The officers of said corporation are Gurnon R. Scott, President; Thomas T. Fryer, Vice-president; G. G. Jewell, Treasurer; and E. D. Turnure, Secretary, all of whom are residents of the District of Columbia.

3. Upon or about the 14th day of August, 1912, the defendant entered into a contract with the plaintiff by the terms of which the plaintiff agreed to construct a building for the defendant at Gettysburg, Pa., to be used for the exhibition of battle pictures and the defendant agreed to pay the plaintiff for the construction of said building the sum of \$10,800.00. The plaintiff under the terms of said contract has proceeded with the construction of said building and has received the sum of \$2,500.00 on account of the work done by it under said contract, the balance of said contract price, i. e. \$8,300.00, being still due and owing to the plaintiff. The plaintiff believes it is the only creditor of the defendant.

4. The defendant corporation was organized with a capital stock of \$25,000.00, \$13,500.00 of which has been issued and paid for, of which issued stock \$12,500.00 is held by Albert J. Hahne, of Newark, N. J. It was, as the plaintiff is advised and believes, the intention of the stockholders and it was the understanding and agreement with the plaintiff that the plaintiff was to be paid for the work and services performed under the contract aforesaid out of the monies which the said defendant corporation received from the sale of the said \$13,500.00 of its capital stock as aforesaid. The affairs of said defendant corporation have, however, been grossly mismanaged and the said corporation is now insolvent and unable to pay the indebtedness due the plaintiff as aforesaid. The monies received from the sale of the capital stock as aforesaid has been wrongfully misappropriated and dissipated so that there is now in the hands of the treasurer of said corporation, as the plaintiff is reliably advised and informed, less than \$100.00. It has no other visible assets in the District of Columbia except its office furniture and no other assets except

19 the claims that it may have against the persons who have wrongfully misappropriated or wrongfully received the proceeds of the sale of capital stock, as aforesaid.

5. The affairs of said corporation are in such condition owing to the internal dissension and disputes which have arisen on account of the misappropriation of funds as aforesaid that the same can no longer be properly managed or administered by the officers and directors of said corporation and the former treasurer of said corporation refuses to give up or surrender the treasurer's books to the present treasurer so that even the disposition of said funds by him can be ascertained.

6. Your petitioner is advised and believes that it is entitled to have the property and assets of said defendant corporation applied to the payment of its indebtedness to it and that the same can be efficiently done only by the assistance of the Equity Court.

7. The defendant corporation, through its Board of Directors, desires that a receiver be appointed, as will appear by reference to the certified copy of a resolution passed by them, annexed hereto and made a part hereof.

Wherefore, the plaintiff prays:

1st. That the affairs of said defendant corporation in the District of Columbia may be wound up and settled and its assets applied to the payment of the debt due the plaintiff.

2d. That a receiver may be appointed to take charge of the property and affairs of said corporation in the District of Columbia and to collect and dispose of its assets under the order of this Court.

20 And for such other and further relief as to the Court may seem necessary and proper.

THE CHAS. J. CASSIDY COMPANY, INC.,
By CHARLES J. CASSIDY, *Pres.*

I, Charles J. Cassidy, on oath state that I have read the foregoing Bill by me subscribed as President of The Chas. J. Cassidy Company, Inc. and know the contents thereof; the matters and things therein stated as of my own personal knowledge are true and those stated upon information and belief I believe to be true.

CHAS. J. CASSIDY, *Pres.*

Subscribed and sworn to before me this 5th day of December, A. D. 1912.

[SEAL.]

C. COLDEN MILLER,
Notary Public, D. C.

The Dewey Hotel, Fourteenth and L Streets N. W., Washington,
D. C.

W. W. Brown.

DEC. 5, '12.

This is to certify that the following resolution was duly put and carried *by* at a meeting of the Board of Directors of The Gettysburg Battle Picture Asso., Held today. Said meeting called by the President and a quorum present.

Resolved unanimously that the court be asked to appoint a Receiver of this company, owing to gross mismanagement and internal dissensions of such a nature that it is impossible to do business and further the company has less than \$50 in its Treasury and a liability of several thousands of dollars and appears insolvent.

21 The officers of this company are directed to certify to a copy of this resolution and to send same to the attorney of The Cassidy Co. for use in Receivership proceedings.

This is certified to be a true copy of the minutes of above company.

GURNON R. SCOTT, *President.*

Attest:

E. D. TURNURE, *Sec'y.*

Order Appointing Receiver.

Filed December 5, 1912.

* * * * *

Upon consideration of the bill of complaint filed herein praying for the appointment of a receiver, which application is not resisted by the defendant, and said defendant waiving service of all notice, its Secretary being personally present in the Court at the time of the passing of this order and consenting -hereto, and its Board of Directors having by resolution requested the appointment of a receiver, and Albert J. Hahne, the holder of the majority of the capital stock of said corporation being present in court by his attorney, George H. Pierce, it is by the court. this 5th day of December, A. D. 1912, adjudged, ordered and decreed as follows:

22 Homer T. Booth is hereby appointed receiver of all the property of every description belonging to the defendant, and he is authorized and directed to take immediate possession thereof, and to hold, control, manage and dispose of the same under the orders of this Court.

The said receiver shall give bond in the usual and proper form in the sum of \$5,000.00 conditioned for the faithful performance of the trust in him reposed.

The officers, directors and agents of the defendant and all other persons and corporations are hereby required to turn over and deliver to said receiver all property, books or papers, evidences of indebtedness or other assets in the hands or under the control of any of them and belonging to said corporation.

JOB BARNARD, *Justice.*

23

Petition.

Filed December 11, 1912.

* * * * *

The petition of Homer T. Booth respectfully shows to the Court as follows:

1. He was, on the 5th day of December, 1912, appointed by this Court receiver of the defendant, The Gettysburg Battle Picture Association, and has duly qualified as such.

2. Upon his appointment and qualification he at once began an investigation of the affairs of the defendant corporation and attempted to locate and ascertain the assets thereof and to take the same into his possession and custody.

3. He has found upon investigation that the sum of \$13,300.00 was paid into the treasury of said corporation as the proceeds of sale of capital stock; that of this sum \$12,500.00 was paid by Albert J. Hahne, of Newark, N. J. Of the balance of \$800.00, \$500.00 was paid by A. M. Slagle, \$100.00 by Robert C. Miller and the balance by a number of persons and organizations in sums ranging from \$10.00 to \$50.00.

4. The said defendant corporation was organized and incorporated solely for the purpose of constructing a building at Gettysburg, Pennsylvania, for the purpose of exhibiting a battle picture, which was owned by Albert J. Hahne. The stock purchased by said Albert J. Hahne was issued on the books of the company in the name of Chancey O. Howard and still stands in his name on the books,
24 the said Howard being the largest stockholder of record, a director and until a few days before the appointment of a receiver, the treasurer of said corporation, Gurnon R. Scott, being president and Edward D. Turnure, secretary.

5. He is informed and believes, and therefore avers, that the said Chancey O. Howard from the beginning assumed complete control of the affairs and management of said corporation, using said Scott and Turnure merely as figure heads; that while the books of the company are in a very unsatisfactory and incomplete condition, he finds, from the best examination he has been able to make, that probably not more than \$5,000.00 of the monies of the corporation has been expended in accordance with the purpose and aims of which said corporation was organized and said money paid in, the sum of \$113.34 being paid out for incorporation expenses, \$218.70 for furniture and office fixtures, \$225.00 for rental of ground on which the building was to be erected at Gettysburg, \$488.00 for architect's fees and \$2,500.00 to the contractors, the plaintiffs in this cause, on account of a contract for the erection of said building; and that it would appear the sum of about \$8,000.00 has within a short time past been wrongfully and improperly diverted and drawn from the treasury of said company into the hands of the officers aforesaid, principally into the hands of said Chancey O. Howard, by whom it is held and concealed and by whom it has been, or is about to be, converted to their own use. All of said monies so wrongfully paid out was paid out on checks procured to be issued and signed by said Chancey O. Howard, the sum of about \$335.00 having apparently gone to said Gurnon R. Scott, the sum of about \$800.00 to Edward D. Turnure as loan, the sum of
25 \$1,950.00 to said Chancey O. Howard and the further sum of approximately \$4,500.00 having been apparently turned over to the Auto Delivery Co., a corporation owned and controlled by said Chancey O. Howard, which, as your petitioner believes, has been used by him merely as a conduit to convey and transfer to himself and to conceal the principal part of the monies unlawfully paid to him. That although demand was made said officers have refused to

turn over to this petitioner the monies so wrongfully received by them from said treasurer of the company and he believes that a large part of said monies, especially the monies turned over to said Chancey O. Howard by himself and to the Auto Delivery Co. is being wrongfully held and concealed by him. He further shows that all of said officers are insolvent, having no visible assets sufficient to enable your receiver to collect the money so wrongfully diverted as aforesaid and that unless said officers are forced to disclose the disposition made by them thereof the same will be lost to your receiver and to the creditors and stockholders of said Gettysburg Battle Picture Association.

Wherefore, the premises considered, your petitioner prays as follows:

1. That said officers may be required and ordered by this Court to surrender and turn over to this petitioner the monies so received by them and now concealed by them.

That they may be required to answer this petition and to show the disposition made by each of them of the monies so received and turned over to them and that they may, if necessary, be brought before the Court and examined under oath as to the disposition made of said monies.

26 That a rule issue out of this Court directed to said officers requiring them to appear on the — day of December, 1912, and answer the allegations of this petition and show cause, if any they have, why said monies so wrongfully diverted by them should not be turned over to this petitioner.

And for such other and further relief as to the Court may seem necessary and proper.

HOMER T. BOOTH, *Receiver*.

I, Homer T. Booth, on oath state that I have read the foregoing petition by me subscribed and know the contents thereof; that the matters and things stated therein as of my own personal knowledge are true and those stated upon information and belief, I believe to be true.

HOMER T. BOOTH.

Subscribed and sworn to before me this 11th day of December, A. D. 1912.

J. R. YOUNG, *Clerk*,
By R. P. BELEW, *Ass't Clerk*.

27

Rule to Show Cause.

Filed December 11, 1912.

* * * * *

Upon consideration of the petition of Homer T. Booth, Receiver, filed herein December 11th, 1912, it is by the Court this 11th day of December, 1912, ordered that Chancey O. Howard, Gurnon R. Scott and Edward D. Turnure appear in this Court on the 17th day of December, 1912, at 10:00 A. M. and answer this petition under oath

and show cause, if any they have, why they should not turn over to said receiver the monies of The Gettysburg Battle Picture Association in said petition alleged to have been wrongfully diverted by them, as prayed herein, provided a copy of this order be served upon the said respondents on or before the 13th day of December, 1912.

JOB BARNARD, *Justice*.

Marshal's Return.

Served copy of within rule to show cause on C. O. Howard and Gurnon A. Scott personally, December 11, 1912. Edward D. Turnure personally, December 12th, 1912.

AULICK PALMER, *Marshal*,
C. R. S.

28

Answer to Rule.

Filed December 16, 1912.

* * * * *

For answer to the petition of the Receiver filed herein on December 11, 1912 and the rule to show cause issued thereunder on said date and served upon him, the respondent, Edward D. Turnure, sayeth:

1, 2, 3 and 4. He admits the allegations of the first four paragraphs of said petition.

5. Answering Paragraph 5, he is unable to say without reference to the books and checks of The Gettysburg Battle Picture Association the exact amounts of the various expenditures recited and referred to in said paragraph.

He believes it to be true, however, that the sums of \$113.34 for incorporation expenses, \$218.70 for furniture and office fixtures, \$225.00 for rental of ground at Gettysburg, \$488.00 for architect's fees and \$2,500.00 to The Charles J. Cassidy Company, Inc. were expended as they were purported to have been. He is unable to state how much or what part of the balance of the money paid into the treasury of the company was properly expended. He says that he received approximately \$500.00 as personal loans of which amount he advanced to the Auto Delivery Co. \$135.00; that in addition to the above amount he received previous to June 5, 1912; \$100.00 from C. O. Howard as a personal loan, which amount was, as this petitioner believes, together with the sum of \$80.00 due him for four weeks' salary at \$20.00 a week for preliminary work

29 on the organization of the Battle Picture Association, withdrawn from the treasury of the Battle Picture Association in the first check of \$1,500.00 paid to the order of C. O. Howard on June 5, 1912. The balance of the money paid to him was for his expenses and salary from June 5, 1912 as Secretary of the Association to date of his resignation. Further answering he states that he was led to believe and did believe that C. O. Howard, the Treasurer of said corporation, on account of having in his control 1,250 shares

of the stock of the said corporation in his name on the books of the company and on account of a separate agreement which said C. O. Howard informed him he had with Albert J. Hahne, who had furnished money for the purchase of the stock, was in absolute charge of the affairs of the Association. He took his instructions and orders from said Howard absolutely, being called to the office of said Howard in the Pension Building each day at noon for the purpose of receiving orders and also receiving further orders from him at the office of the Association in the Jenifer Building, at which office said Howard called in the afternoon or evening.

Further answering this respondent says that he has committed no wrong nor violated his trust as Secretary of the corporation and on several occasions when this respondent questioned the authority of said Howard to make advances to him, he was informed by said Howard that he, said Howard, had authority to make said advances, that it was proper for the respondent to receive them, and that the same could be replaced by him from a commission which it was understood he was to receive when the battle picture, for which the building was to be constructed at Gettysburg, was finally sold and disposed of.

30 And now having answered, he prays to be hence dismissed with his costs and charges in this behalf sustained.

EDWARD D. TURNURE.

I, Edward D. Turnure, on oath state that I have read the foregoing Answer subscribed and know that contents thereof; that the matters and things stated therein as of my own personal knowledge are true and those stated upon information and belief, I believe to be true.

EDWARD D. TURNURE.

DISTRICT OF COLUMBIA, ss:

Subscribed and sworn to before me this 16th day of December, 1912.

[SEAL.]

CORNELIUS ECKHARDT,
Notary Public, D. C.

Answer to Rule of Gurnon R. Scott.

Filed December 16, 1912.

* * * * *

For answer to the petition of the Receiver filed herein on December 11, 1912 and the rule to show cause issued thereunder on said date and served upon him, the respondent, Gurnon R. Scott, saith:

1, 2, 3 and 4. He admits the allegations of the first four paragraphs of said petition.

31 5. Answering paragraph 5 he is unable to say without reference to the books and checks of the Gettysburg Battle Picture Association the exact amounts of the various expenditures recited and referred to in said paragraph.

He believes it to be true, however, that the sums of \$113.34 for incorporation expenses, \$18.70 for the furniture and office fixtures, \$225.00 for rental of ground at Gettysburg, \$448.00 for architect's fees and \$2,500.00 to the Charles J. Cassidy Co., Inc. were expended as they were purported to have been.

Further answering, this respondent says that the expenses of the officers of the corporation were to be covered with notes, said money to be refunded out of the commissions growing out of the sale of the painting known as the Battle of Gettysburg; that to cover his expense for one year respondent gave his note for \$730.00 with the understanding that the Treasurer of the corporation, Chancey O. Howard, was to give a like note. Respondent was later informed by the Secretary of the corporation that the treasurer had not complied with this agreement and showed no inclination so to do, and the secretary did then and there return his note which is herein offered in evidence and marked Exhibit A.

Further answering this respondent avers that he is not familiar with corporation management and was guided at all times and influenced in each and every act by the said Chancey O. Howard, the Treasurer of The Gettysburg Battle Picture Association in whose honesty and integrity he believed, the said Howard having affirmed on various occasions that he had before been connected with corporations and that he understood the management of the same, and by reason of the trust and confidence respondent believed that all acts done by him as an officer of this corporation were right and proper.

Respondent further saith that on or about the 23rd day of November, Chancey O. Howard tendered his resignation as treasurer of The Gettysburg Battle Picture Association but on this occasion the conduct of the said Howard was such as to cause a suspicion in the mind of the respondent in regard to the right or legality of the past acts of this corporation. On interrogating Howard in regard to these matters and suspicions respondent was informed by said Howard that inasmuch as he was the majority stock holder of the corporation it was only necessary for the said Howard to call a meeting of the stock holders, and holding a majority of the stock to affirm all the acts of the officers, thereby giving each a clean sheet, and the said Howard did on the 28th day of November, 1912, in a letter call such a meeting which letter is offered in evidence and marked Exhibit B. But on advice of the Secretary of the corporation, your respondent refused to call such a meeting believing that a wrong had been done or might be done and on advice of counsel aided in bringing these matters to the attention of Honorable Court.

Respondent saith further that of the amounts drawn by him personally were expended by him in the interests of the corporation said sums amounting to \$350.00. Respondent believes that in all his acts and functions performed as an officer of the corporations he was acting within his rights.

And now having answered, he prays to be hence dismissed with his costs and charges in this behalf sustained.

GURNON R. SCOTT.

33 I, Gurnon R. Scott, on oath state that I have read the foregoing answer by me subscribed and know *that* the contents thereof; that the matters and things stated therein as of my own personal knowledge are true and those stated upon information and belief, I believe to be true.

GURNON R. SCOTT.

DISTRICT OF COLUMBIA, ss:

Subscribed and sworn to before me this 16th day of December, A. D. 1912.

[SEAL.]

CORNELIUS ECKHARDT,
Notary Public.

Answer of C. O. Howard to Rule.

Filed December 17, 1912.

* * * * *

Now comes Chancey O. Howard, in his own proper person, and appearing specially for the purpose of answering the rule to show cause issued herein on the 11th day of December A. D. 1912 upon the petition of Homer T. Booth, receiver of the Gettysburg Battle Picture Association, and for that purpose only, and not admitting or submitting to the jurisdiction of the said court for any other purpose, and not admitting the validity of the appointment of the said Homer T. Booth as receiver of the said company, respectfully shows the court as follows:

34 First. In answer to Paragraphs 1, 2 and 3, he neither admits nor denies the allegations therein contained but puts the receiver to a strict proof of all the allegations therein contained as may be deemed by this court material and competent.

Second. In answer to Paragraph 4, he denies that the defendant corporation had for its aim the sole purpose of constructing a building at Gettysburg, Pa., for the exhibition of a battle picture which was owned by Albert J. Hahne, but avers that while the corporation charter may show that this was the main object and purpose of incorporating the said company yet it was understood and agreed by all the parties in interest both before and after the actual organization of said company that the purpose of the said organization should be not only to procure the erection of a building at Gettysburg but also to advertise, publish and make known the merits and historical value of the picture to be therein displayed with a view to procuring a purchaser for the said picture. Further answering Paragraph 4 he says that while a portion of the stock purchased by said Albert J. Hahne was issued on the books of the defendant company in the name of Chancey O. Howard, or C. O. Howard, and still stands in his name on the said books, yet said Hahne now holds a note of the said Howard for \$5,000 and other good and valuable consideration together with the certificate of stock of the defendant company endorsed in blank as security for the money advanced by the said Hahne. Further answering Paragraph 4 he admits that

he is the largest stockholder of record and was until a few days before the appointment of a receiver the treasurer of said corporation, but states that while he was a director of said company that on or about December 3, 1912, he resigned as such director placing
35 his resignation together with a proxy of all the stock issued in his name with one ——— Pierce who was the personal representative and attorney of the said Albert J. Hahne, that he is not advised whether or not his resignation as said director has ever been accepted.

Third. In answer to Paragraph 5, he denies that from the beginning he assumed complete control of the affairs and management of the said corporation using the said Scott and Turnure merely as figureheads, but states that the affairs of the corporation were managed and controlled by a board of five directors composed of himself, the said Scott, Turnure, ——— Fryer, and ——— Miller. That the books of said company were kept, or supposed to be kept, by and under the direction of the said Edward B. Turnure as secretary, and he believes and avers that the books were turned over to the petitioner, Homer T. Booth, by the said Turnure, that not having access to the said books it is impossible for him to state just what entries are therein contained, and that unless some auditor or accountant is placed upon said books it will be impossible for the court to be fully informed as to the amounts received and the disposition thereof. That from memory and such information as he has been able to gather since this rule has been served on him he believes and therefore avers that more than \$5,000 of the money of the corporation has been expended in accordance with the purpose and aim for which said corporation was organized. That the item of \$113.34 paid out for incorporation expenses is substantially correct.

That the item for \$218.70 for furniture and office fixtures is
36 approximately correct. That the items of \$225 for renting of ground and \$44 for architect's fee are probably correct. That the item of \$2,500 paid to the contractors, the plaintiffs in this cause, was paid to the said contractors, but that \$4,000 additional thereto was paid to the said contractors in the shape of First Mortgage Bonds.

Further answering Paragraph 5 he says that those allegations therein contained which have not already been answered by this respondent are to the best of the respondent's information and belief absolutely false and untrue, but that an examination of the books of the said defendant company will or should show that all of the money paid to the Gettysburg Battle Picture Association has been expended for the sole purpose of furthering and promoting the aims and purpose of the said corporation.

Besides answering the rule herein issued, or so much thereof as he is advised is necessary, the respondent considers it his duty to inform at this time the court of a transaction between the plaintiff herein, the defendant, and the Auto Delivery Company which is named in the petition of the said Homer T. Booth as a conduit for the purpose of conducting money, which transaction was as follows:

That on or about the 11th day of October 1912, the said Auto

Delivery Company borrowed from the defendant herein the sum of \$4,000 for which the said Auto Delivery Company executed and delivered to the defendant its 8 Debenture Bonds for the sum of \$500 each, with interest at 5% per annum, said bonds being due

and payable on July 1, 1917, as will more fully appear in
37 Paragraph 3 of the answer of the Auto Delivery Company filed on December 2d to a rule to show cause issued in the case of The Gettysburg Battle Picture Association vs. Auto Delivery Company, in this court, and known as Equity No. 31,437, and it is prayed that the pleadings in entirety in said equity cause be taken into consideration in considering and determining the disposition made of the rule to show cause issued herein. Your respondent is informed and believes and therefore avers that the aforementioned bonds are now being held by the plaintiff herein and were received by it from the defendant herein as a payment on the contract price of the building supposed to be put up by the plaintiff for the defendant.

Wherefore, the premises considered, your respondent prays that this cause may be referred to the Auditor of this court in order that a thorough audit and accounting of the books of the said defendant company may be had and the conditions and affairs of said company may be determined.

CHANCEY O. HOWARD.

CITY OF WASHINGTON,
District of Columbia, ss:

I, Chancey O. Howard, being first duly sworn, do on oath depose and say that I have read the foregoing and annexed petition by me subscribed and knows the contents thereof, and that the matters and things therein set forth as true are true in fact, and those matters and things therein set forth upon information and belief I verily believe to be true.

CHANCEY O. HOWARD.

38 Subscribed and sworn to before me this 16th day of December A. D. 1912.

[SEAL.]

C. M. FORREST,
Notary Public, D. C.

Answer of Defendant.

Filed January 3, 1913.

* * * * *

The Gettysburg Battle Picture Association, a corporation, through its Vice-president, Thomas T. Fryer, answering the bill of complaint filed in the above entitled cause, sayeth:

It admits the allegations contained in the bill of complaint to be substantially correct but it says that in addition to the indebtedness to the plaintiff it is also indebted in small sums to certain other persons, the exact amount of which indebtedness it is unable to state

herein. It consents to the granting of the relief prayed for in said petition and to the application of its assets towards the payment of its obligations.

THE GETTYSBURG BATTLE PICTURE
ASSOCIATION,
By THOMAS T. FRYER, *Vice-President*.

I, Thomas T. Fryer, on oath state that I have read the foregoing answer by me subscribed and know the contents thereof; that the matters and things therein stated as of my own personal
39 knowledge are true and those stated upon information and belief I believe to be true.

THOS. T. FRYER.

Subscribed and sworn to before me this 2nd day of January, A. D. 1913.

[SEAL.]

C. COLDEN MILLER,
Notary Public, D. C.

Report of Auditor.

Filed March 10, 1913.

* * * * *

This cause was referred to the Auditor to report as to the disposition of the assets of the defendant corporation, and by whom and to whom the same were disposed of. After due notice I proceeded with the reference, and I return herewith the testimony and exhibits, and in the schedules hereto annexed I show the details of my findings as to whom the assets of the corporation were disposed of.

Chauncey O. Howard was the active promoter and controlled 1,250 shares out of the 1,330 shares of stock disposed of, 500 being those issued to him for the money loaned by Hahne, and 750 being those subsequently purchased by Hahne and issued in Howard's name, Hahne not desiring to appear in the corporation. He was also Treasurer of the Corporation. One Scott, an acquaintance of his was named President of the Corporation, but never held any stock until within a few weeks of the appointment of a receiver.
40 Edward D. Turnure was personally employed by Howard and named Secretary of the Corporation, and he never held any stock until within a few weeks of the appointment of the Receiver. Both of these parties, therefore, acted without any authority for a period of over five months. It is testified by both Scott and Turnure that Howard dominated and controlled their every act, everything being done by them under his direction. From all the evidence in the case, including the records of this Company and of the Auto Delivery Company, which were also introduced in evidence, their testimony is fully borne out. All checks for disbursements were signed by Scott, as President and Howard as Treasurer, and issued by Turnure. Generally they were written by Turnure. Scott, as President, even signed checks in blank and Turnure filled

them in. Turnure probably issued some checks of the Corporation under a general authority from Howard and without specific directions in each and every instance. In the case of the large disbursements he testifies they were made by specific directions of Howard. The only proper conclusion to be drawn from all the facts in the case is that all of the funds were disposed of by authority of Howard, either general or specific. Howard was also President, his son Treasurer, and Turnure Secretary of the Auto Delivery Co., the connection of which with this Company will be shown.

In the month of June 1911 Howard and his son, with three other associates, then conducting a small delivery business which apparently during all of its existence has not done more, if anything, than pay expenses, and which certainly in the last months of
41 its existence was not doing this, incorporated the same with a capital stock of \$10,000 or \$20,000. for each, and by agreement the stock was placed in the Treasury for sale with a thirty days' option in each holder thereof to buy the same at \$.50 on the dollar. In the spring of 1912 Howard induced one Hahne of Newark, N. J. to enter into a scheme for the erection of a building at Gettysburg, Pa., in which to exhibit a painting of the Battle of Gettysburg owned by Hahne, an admission fee to which exhibit was to be charged, and for the further purpose of interesting visitors and patriotic organizations throughout the Country, with the ultimate view of making a sale of the painting to the Government of the United States for a large sum of money. The plan was to be carried out through the medium of an organized stock Company, and upon sale of the picture being consummated, Howard and his associates were to receive liberal commissions from Hahne, the amount not being specified. As a result of these negotiations a written agreement was entered into between Hahne and Howard, under which Hahne was to lend Howard \$5,000 without interest, taking his note therefor, and, as security for the note \$10,000 of the stock which Howard alleged he then owned in the Auto Delivery Company, and the \$5,000 was to be paid in to the Corporation to be formed and used with other proceeds of sales of stock for the purposes before mentioned. Howard gave his note to Hahne, accompanied by a certificate for \$10,000 of stock of the Auto Delivery Co. This was in May 1912. According to Howard's testimony, he had never purchased this stock under his option and held it with the stock of the other parties to the concern as trustee
42 under the original pooling agreement. The records of the Auto Del. Co. show that only trifling sales of the stock had ever been made, none to the original holders. Howard was not, therefore, the owner of the stock and had no authority to issue this certificate to himself. Moreover, Howard says he told Hahne that he only had his salary as a Government clerk and this "small ten cent delivery business" which he had started for his son. Apparently, therefore, Howard was the Auto Delivery Co., and the stock had behind it assets of but small value.

Hahne advanced to Howard \$200 for preliminary expenses and engaged the services of one Mr. Fryer to represent him, and to look after the Gettysburg and of the affairs of the Company, advancing

him also \$200 for preliminary expenses. Later in May, Hahne sent to Howard, as Treasurer of the Gettysburg Battle Picture Ass'n not yet organized, his check for \$4,600, representing the balance of the \$5,000. Howard deposited the same in an account in the bank of Commerce and Savings which he states was a mixture of his personal account and a stock sales account for the Auto Del. Co., and two days later paid over from the same \$2,500. to the Auto Del. Co., as an alleged payment on account of the \$10,000 of stock sent to Hahne as security for Howard's note. From this \$2,500. paid into the Auto Del. Co., Howard two days later withdrew \$1,500, and deposited it to his personal credit in the Second National Bank. The following day he withdrew from the Second National Bank \$1,000 and deposited it to his credit in the Bank of Commerce and Savings and the same day he withdrew from the Auto Del. Co.'s account to the order of the Gettysburg Battle Picture Ass'n \$750.00. Three days later he deposited this \$750. together with a check drawn on the

43 U. S. Trust Company \$500 and a check drawn from his account in the Commerce and Savings for \$1,250 to the credit of the Gettysburg Battle Picture Ass'n making the first deposit of \$2,500 to the credit of that Company out of the funds advanced by Hahne. On the same day he drew two checks on the Gettysburg Battle Picture Ass'n for the amount of this deposit, one for \$1,500 supposedly to cover legitimate expenditures of the Company and the larger part of which has never been accounted for properly, and one for \$1,000 professedly for the purchase of a bond of the Auto. Del. Co. This latter check was deposited on the same day with the Auto Del. Co. and immediately withdrawn by Howard. With the proceeds of these two checks Howard purchased from the Second National Bank a draft on New York for \$2,500 and deposited it to the credit of the Gettysburg Battle Picture Ass'n. By these transactions Howard apparently made a second deposit of \$2,500 to the credit of the Gettysburg Battle Picture Ass'n when as a matter of fact he was simply re-depositing its own funds previously withdrawn. While, therefore, the deposit book of the Association shows total deposits of \$13,300 for the stock sold, \$2,100 of the \$4,600 advanced by Hahne never went into its Treasury at all, the credit being made to appear by the improper diversion of its funds through the medium of the false voucher 1 and purchase of the substantially worthless bond of the Auto Del. Co.

Co-incident with the first deposit of \$2,500 application for the charter of the Gettysburg Battle Picture Ass'n was made, setting out alleged holdings of stock not as a matter of fact ever held, and the charter was granted June 26, 1912. The purpose of the Corporation as set out in the application was recited to be the erection of a
44 building for the exhibition of a painting, but it appears from the contract between Hahne and Howard that another purpose of the Company and a very important purpose was to interest the Sons of Veterans, a large organization throughout the United States, in the sale of stock and otherwise, and this being so, it is contended that the use of the monies in the corporation for the maintenance of offices here for advertising and circularizing and the payment

of salaries of clerical assistants, including the salary of the Secretary, was justified.

To furnish apparent warrant for the diversion of the funds of the Gettysburg Battle Picture Ass'n Howard had the Auto Del. Co. authorize the issue of its bonds secured by a chattel trust on two or three machines apparently not worth the face of the bonds, to wit: \$4,000, and the \$1,000 paid as above was for one of these bonds for the Gettysburg Picture Ass'n. Another car, a touring car, was purchased by the Auto Del. Co., the car subsequently used by Howard, Scott, Turnure and Howard's family on their various trips ostensibly on the business of the Gettysburg Battle Picture Ass'n, and maintained by the Gettysburg Battle Picture Ass'n and ultimately paid for by the Gettysburg Battle Picture Ass'n.

In a short while the funds which found their way into the Treasury of the Company were practically exhausted, and Howard induced Hahne to take \$7,500 worth of stock for which he paid full value at different times in the next few months. A large part of these monies were diverted for the purchase of the remaining bonds of the Auto

45 Del. Co., and from the accounts of the Auto Del. Co., it appears that the car above referred to was substantially paid for out of these exact monies, and two other cars of the Auto Del. Co. were partially paid for out of the same. In the meantime, Howard and his associate Turnure, who appear to have profited most by the methods of business conducted by the Corporation, made a considerable number of trips to Gettysburg and other places, allegedly on behalf of the Corporation, which trips were generally taken at the end of the week over Sunday in the touring car and most of which, it is safe to assume, were mere junketing trips, or personal excursions, the Gettysburg Battle Picture Ass'n paying the expenses of these trips, paying for the maintenance of the car, and disbursing large sums to Howard and Turnure and some small sums to Scott for alleged expenses, for which no vouchers have ever been produced with the exception of two or three vouchers produced by Scott in this hearing. Scott received all told \$335. and it appears that he made sale of 50 shares of stock of the value of \$500, so that his trips appear to have produced something. Outside of this sale by Scott only 30 shares representing \$300 appear to have been disposed of to Sons of Veterans' organizations and individuals not through the medium of these trips, making the total sales of stock including the 1,250 shares paid for by Hahne and the 50 shares sold by Scott 1,330 shares. On some of these trips, however, business of the Company was attended to, and some part of these travelling expenses were no doubt necessary.

46 In the meantime, also, the Gettysburg Battle Picture Ass'n was paying the salaries of employees who were also looking after the affairs of the Auto Del. Co. and paying some of the bills of the Auto Del. Co., and at the time of the appointment of the receiver all of the funds of the Gettysburg Battle Picture Ass'n had been exhausted, with the exception of \$1.04 in bank and of the total sum, upon the most liberal allowance for the conduct of the affairs of the Company, more than one-half or over \$7,000 had been

frittered away. Co-incident with the exhaustion of the funds of this Company, which had been carrying the Auto Del. Co. for months, the Auto Del. Co. itself failed for lack of monies which this Company had been supplying to it, and shortly after the receivership in this case it went into the hands of receiver with trifling assets.

In Schedule A, I list the disbursements of the Company which may be regarded as legitimate, being disbursements for the purposes of the Corporation in connection with the building at Gettysburg and office expenses in Washington. These include one half of the salaries of the employees, the remaining half being charged to the Auto Del. Co., the offices being joint and the testimony showing that the employees attended to the business of both Companies.

Schedule B shows the disbursements on account of travelling expenses of the three officers, which I deem it proper to allow as possibly legitimate. There is no way by which a segregation can be made of these expenses as between those allowed and disallowed because there is no definite testimony as to the dates of the trips to Gettysburg upon which the affairs of the Corporation received attention. The allowances are mostly in the earlier days of the Corporation when it sufficiently appears that some trips to Gettysburg
47 were necessary in connection with the affairs of the Corporation. These allowances can only be approximated, and in my judgment are liberal, considering all the circumstances of the case.

Schedule C shows the disbursements for the maintenance of the motor car of the Auto Del. Co. used on these trips and purchased with monies of this Company. The amount of this maintenance would be a reasonable charge for the number of trips necessarily taken if the car were hired, and if the car be treated as the property of the Gettysburg Battle Picture Association, the cost of the maintenance is not large. Of course, in either event, the purchase and the use of the car must be regarded as an extravagance, and the Court may conclude in that light that this sum would be properly chargeable to Howard.

In Schedule D, I show the payments to the Auto Del. Co. for its bonds secured by chattel trust on its property and effects, including the car above referred to.

Schedule E, shows other payments to and for the Auto Del. Co., being for rent of its offices, its share of the telephone bill, and of the salaries, and two items of cash, one for monies advanced and the other being a payment for use of the motor car after the Gettysburg Battle Picture Ass'n ceased to pay for its maintenance and being within the period of time covered by the unnecessary excursions in the car.

Schedule F shows the advances to the officers of the Corporation which should certainly be charged to them individually,
48 being monies confessedly advanced to them as loans and monies drawn for expenses which were unwarranted and unaccounted for.

Schedule G shows the persons to whom the monies of the Corporation were disbursed and the amounts disbursed to them respectively.

Schedule H is a recapitulatory account, showing the receipts from stock subscriptions, the disbursements which may be regarded as proper from the most liberal allowance, the disbursements which must in any event be regarded as improper, and the balance of cash coming into the hands of the receiver.

LOUIS A. DENT, *Auditor*.

March 6, 1913.

SCHEDULE H.

Recapitulatory Account.

Receipts from Stock subscriptions..... \$13,300.00
Contra:

Disbursements certainly legitimate per Schedule A.....	5,057.35	
Travelling expenses possibly legiti- mate and reasonable to allow, per Schedule B.....	641.98	
Disbursements for maintenance of motor car reasonable to allow for service Schedule C.....	348.38	
		6,047.71

Balance down		7,252.29
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Paid for bonds of Auto Delivery Co. per Schedule D.....	4,000.00
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Other payments to and for Auto Delivery Co., per Schedule E.....	751.60
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Advances to officers certainly unwarranted
per Schedule F:

Scott	105.00
Howard	1,623.00
Turnure	771.65

2,499.65

7,251.25

1.04

Other assets in hand consist of the office furniture, unappraised and of small value.

LOUIS A. DENT, *Auditor*.

Tuesday, December 24, 1912.—Appearances before Auditor: Mr. Cox of the firm of Leckie, Cox & Kratz, for the plaintiff, also for the receiver; Mr. Ralph E. Walker, for the defendants, G. R. Scott and Edward D. Turnure; Mr. William J. Neale and Mr. James N. Engle, for the defendant C. O. Howard, appearing specially for the

purpose of this hearing and not generally; also the Receiver, Homer T. Booth.

Tuesday, December 31, 1912.—Appearance as heretofore noted, Mr. George G. Newell appearing for the defendants Turnure and Scott in the absence of Mr. Ralph E. Walker.

February 6, 1913.—Present on behalf of the plaintiff, Mr. Cox. Present on behalf of the defendants Turnure and Scott, Mr. Walker. Present on behalf of the respondent Howard, Mr. Neale and Mr. Engle. Present, also, the receiver Mr. Booth.

50 February 13, 1913.—Present on behalf of the plaintiff, Mr. Cox. Present on behalf of the defendants Turnure and Scott, Mr. Walker. Present on behalf of the respondent Howard, Mr. Neale and Mr. Engle. Present, also, the receiver, Mr. Booth.

Order Confirming Auditor's Report.

Filed March 28, 1913.

* * * * *

Upon motion of the Receiver appointed in the above entitled cause and upon consideration of the report of the Auditor filed herein on the 10th day of March, 1913, no exceptions to said report having been filed and no objection thereto having been signified to the Court, it is this 28th day of March, A. D., 1913, Ordered that the said report of the Auditor be, and the same hereby is confirmed.

THOS. H. ANDERSON, *Justice.*

Replication.

Filed April 28, 1913.

* * * * *

The plaintiff joins issue upon the answer of the defendant Chancey O. Howard to the supplemental bill filed herein.

LECKIE, COX & KRATZ,
Attorneys for Plaintiff.

51 *Report of Receiver.*

Filed May 6th, 1913.

* * * * *

Homer T. Booth, the Receiver of the Gettysburg Battle Picture Association, respectfully reports to the Court as follows:

He charges himself with the following receipts:

Proceeds of sale of office furniture, as shown by statement of Sloane & Co., Auctioneers, filed herewith.....	\$79.35	
Monies received from W. A. Coombe, Receiver of the Auto Delivery Co., as per order of this Court.	685.83	
Cash in Lincoln National Bank to the credit of Gettysburg Battle Picture Association.....	1.04	
	<u> </u>	\$766.22

He claims credit for the following disbursements:

Amount paid for hauling office furniture, as per Voucher No. 1	\$4.50	
Premium on bond, as per Voucher No. 2.....	20.00	
Railroad fare and expenses to Gettysburg, as per Voucher No. 3	12.00	
Railroad fare and expenses to Gettysburg to sell assets in Pennsylvania, as per Voucher No. 4....	11.18	
Auditor's fee	360.00	
Deposited with Clerk of Court for costs.....	30.00	
Marshall and notary fees.....	6.50	
Attorneys' fee, as per Voucher No. 5.....	150.00	
Receiver's commission, as per Voucher No. 6..	76.62	
	<u> </u>	\$670.80
Leaving balance in hand of.....		<u> </u> \$95.42

52 which the Receiver holds subject to the orders of the Court.

The Charles J. Cassidy Company, Inc. is the holder of certain bonds of the Auto Delivery Company of the face value of \$4,000.00, which are secured by a chattel trust on the assets of the Auto Delivery Company and has claimed the balance in the hands of the Receiver, claiming that the said bonds were delivered to it by the Gettysburg Battle Picture Association as a payment on account of a building contract which said Association had entered into with the said Company and that the balance of the proceeds now in the hands of this Receiver were derived from the sale of said assets of the Auto Delivery Company.

In addition, claims have been filed for printing and office expenses, amounting to \$82.85; also a claim of Marlow, Blanchard & Bones for architect fees, amounting to \$550.00, and a claim by T. T. Fryer for salary and traveling expenses as Vice-president of the Association, amounting to \$251.50.

Respectfully submitted,

HOMER T. BOOTH.

DISTRICT OF COLUMBIA, *To wit:*

I, Homer T. Booth, on oath state that I have read the foregoing report by me subscribed and know the contents thereof, the matters and things therein stated are true, to the best of my knowledge and belief.

HOMER T. BOOTH.

Subscribed and sworn to before me this 6th day of May, 1913.

J. R. YOUNG, *Clk*,
By F. E. CUNNINGHAM,
Ass't Clk.

53

Petition of Receiver.

Filed May 6th, 1913.

* * * * *

The petition of Homer T. Booth, Receiver of the Gettysburg Battle Picture Association, respectfully shows to the Court as follows:

Heretofore the said Receiver filed his said petition in this cause praying for a rule to show cause against Chancey O. Howard, Gurnon R. Scott and Edward D. Turnure praying that they be required to disclose the disposition that had been made of the assets of the Gettysburg Battle Picture Association and that they be required to account and turn over to said Receiver the assets which they had received or which were in their hands, all of which will more fully appear by reference to said petition. The said respondents appeared and answered the rule to show cause and thereupon by order of this Court the cause was referred to the Auditor to ascertain the disposition made of said assets. Upon the hearing of the cause before the Auditor the said respondents appeared by counsel and were all personally present and gave evidence at said hearing. In accordance with said order of reference the Auditor filed his report herein showing the disposition made of said assets and showing among other things the amounts of money improperly received by each of the defendants personally and also the monies improperly disposed of by them, as will fully appear by reference to the report of said Auditor which has heretofore been approved and ratified by the Court.

54 The petitioner is advised and believes that the said respondents, Howard, Scott and Turnure, are unable to return to this Receiver the monies unlawfully received or disposed of by them as shown by the said Auditor's account and said Receiver is advised and believes that he is entitled to a decree for judgment against them personally in accordance with the findings of the Auditor's report.

Wherefore, the premises considered, the Receiver prays that a decree for judgment against the Respondents personally may be made in this cause in accordance with the findings of the Auditor's report and that to this end a rule may be issued against them requiring them to appear and show cause, if any they have, why the prayer of this petitioner may not be granted.

And for such other and further relief as to the Court may seem necessary and proper.

HOMER T. BOOTH.

I, Homer T. Booth, on oath state that I have read the foregoing petition by me subscribed and know the contents thereof; that the matters and things therein stated as of my own personal knowledge

are true and those stated upon information and belief, I believe to be true.

HOMER T. BOOTH.

Subscribed and sworn to before me this 6th day of May, A. D. 1913.

J. R. YOUNG, *Cl'k*,
By F. E. CUNNINGHAM, *Ass't Cl'k*.

55

Additional Designation of Record.

Filed July 29th, 1913.

* * * * *

In addition to the papers and proceedings designated by the defendant, Chancey O. Howard, Homer T. Booth, Receiver of The Gettysburg Battle Picture Association, designates the following to be included in the record on appeal:

1. Bill of complaint, filed December 5, 1912.
2. Order appointing receiver, signed December 5, 1912.
3. Petition of receiver, filed December 11, 1912.
4. Rule to show cause, signed December 11, 1912.
5. Answer of defendant, Turnure, to rule to show cause, December 16, 1912.
6. Answer of defendant, Scott, to rule to show cause, filed December 16, 1912.
7. Answer of defendant, Howard to rule to show cause, filed December 17, 1912.
8. Order referring cause to Auditor, signed December 17, 1912.
9. Answer of defendant, The Gettysburg Battle Picture Association, to bill, filed January 3, 1913.
10. Supplemental bill making Howard party, filed January 18, 1913.
11. Answer of defendant, Howard, to supplemental bill, filed February 11, 1913; and joinder of issue, filed April 28, 1913,
- 56 12. Report of Auditor, filed March 10, 1913.
13. Memo. from testimony showing appearances before Auditor.
14. Order confirming Auditor's report, filed March 28, 1913.
15. Report of receiver, filed May 6, 1913.
16. Petition of receiver for judgment against Howard, et al., filed May 6, 1913.
17. Answer of Turnure and Scott to rule to show cause, filed May 9, 1913.

LECKIE, COX & KRATZ,
Attorneys for Homer T. Booth, Receiver.

Memoranda.

September 2, 1913.—Time to file transcript of record further extended to and including September 16, 1913.

September 16, 1913.—Time to file transcript of record further extended to and including October 6, 1913.

October 6, 1913.—Time to file transcript of record further extended to and including October 13, 1913.

57 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

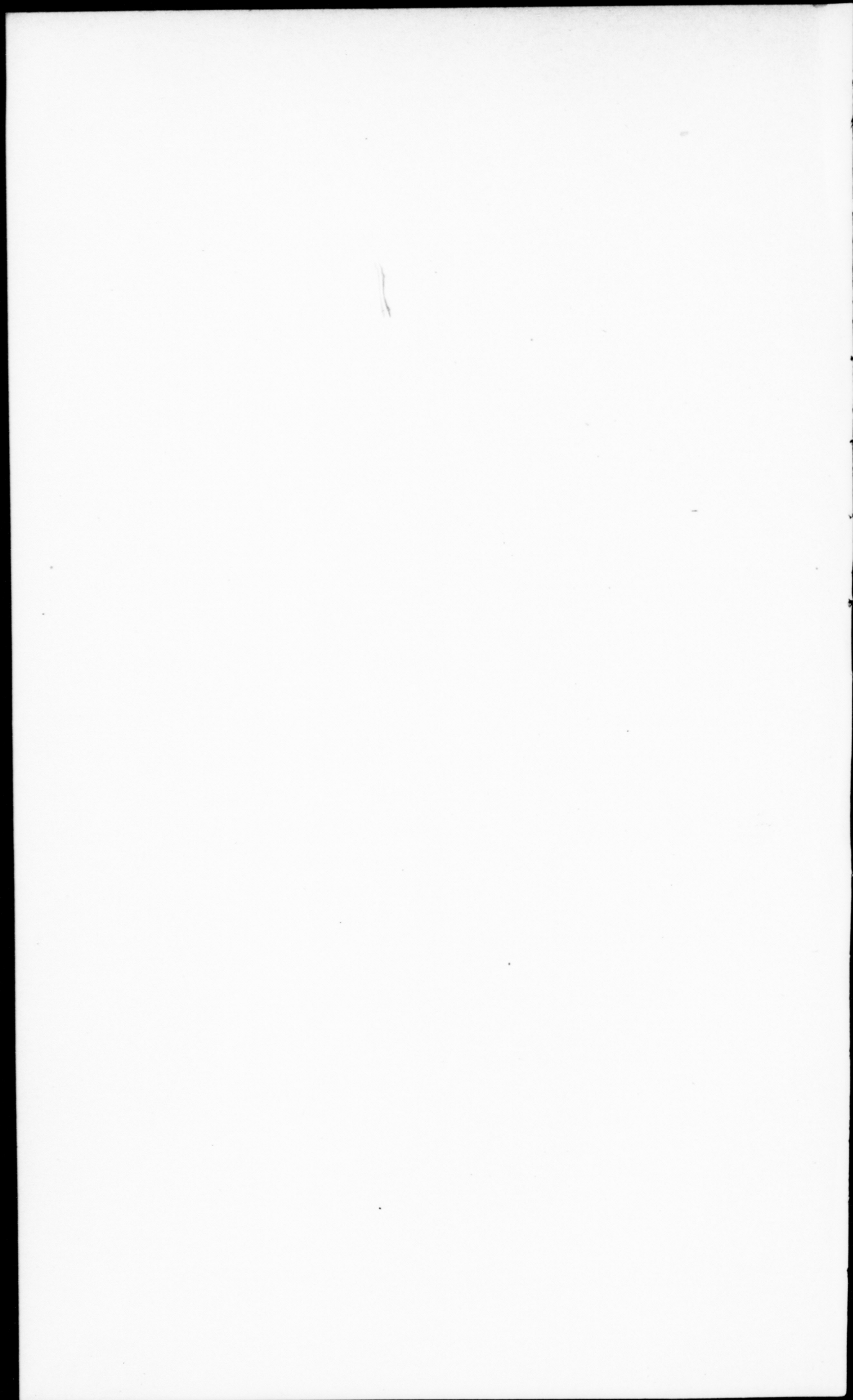
I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 56, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 31454 in Equity, wherein The Chas. J. Cassidy Company, Inc., a Corporation is Plaintiff and The Gettysburg Battle Picture Association, a Corporation is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 26th day of August, 1913.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk,*
By A. W. LEVENSALE, *Assistant Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2610. Chancey O. Howard, appellant, vs. Charles J. Cassidy Company, Inc., a corporation.



ADDITION TO RECORD PER STIPULATION OF COUNSEL.

Court of Appeals of the District of Columbia.

JANUARY TERM, 1914.

No. 2610.

CHANCEY O. HOWARD, APPELLANT,

vs.

CHARLES J. CASSIDY COMPANY, INC., A CORPORATION.

FILED DECEMBER 6, 1913.

In the Court of Appeals of the District of Columbia, January Term,
1914.

No. 2610.

CHANCEY O. HOWARD, Appellant,

vs.

CHARLES J. CASSIDY COMPANY, INC. (a Corporation), Appellee.

This stipulation made and entered into this 5th day of December, A. D., 1913, by and between William J. Neale and James N. England, attorneys for appellant, and Joseph W. Cox, of counsel for appellee, witnesseth:

That the answer of Chancey O. Howard hereto annexed, shall and does properly form a part of the record in this cause, and that the same, was, through some oversight or inadvertance by the clerk of the Supreme Court, left out of the said record, although the same was properly designated as a part thereof, and should form a part of the printed record at page 7 thereof, immediately preceding the decree of May 20, 1913, as set out on said page.

Wherefore, it is stipulated and agreed that the same be printed to

form a part of the said record as fully as though the same had been printed in the original record.

WM. J. NEALE,
JAMES N. ENGLAND,
Attorneys for Appellant.
JOSEPH W. COX,
Of Counsel for Appellee.

Answer of C. O. Howard to Rule.

Filed May 9, 1913.

In the Supreme Court of the District of Columbia.

Equity. No. 31454.

CHARLES J. CASSIDAY COMPANY, INC., a Corporation, Plaintiff,
vs.
THE GETTYSBURG BATTLE PICTURE ASSOCIATION et al., Defendants.

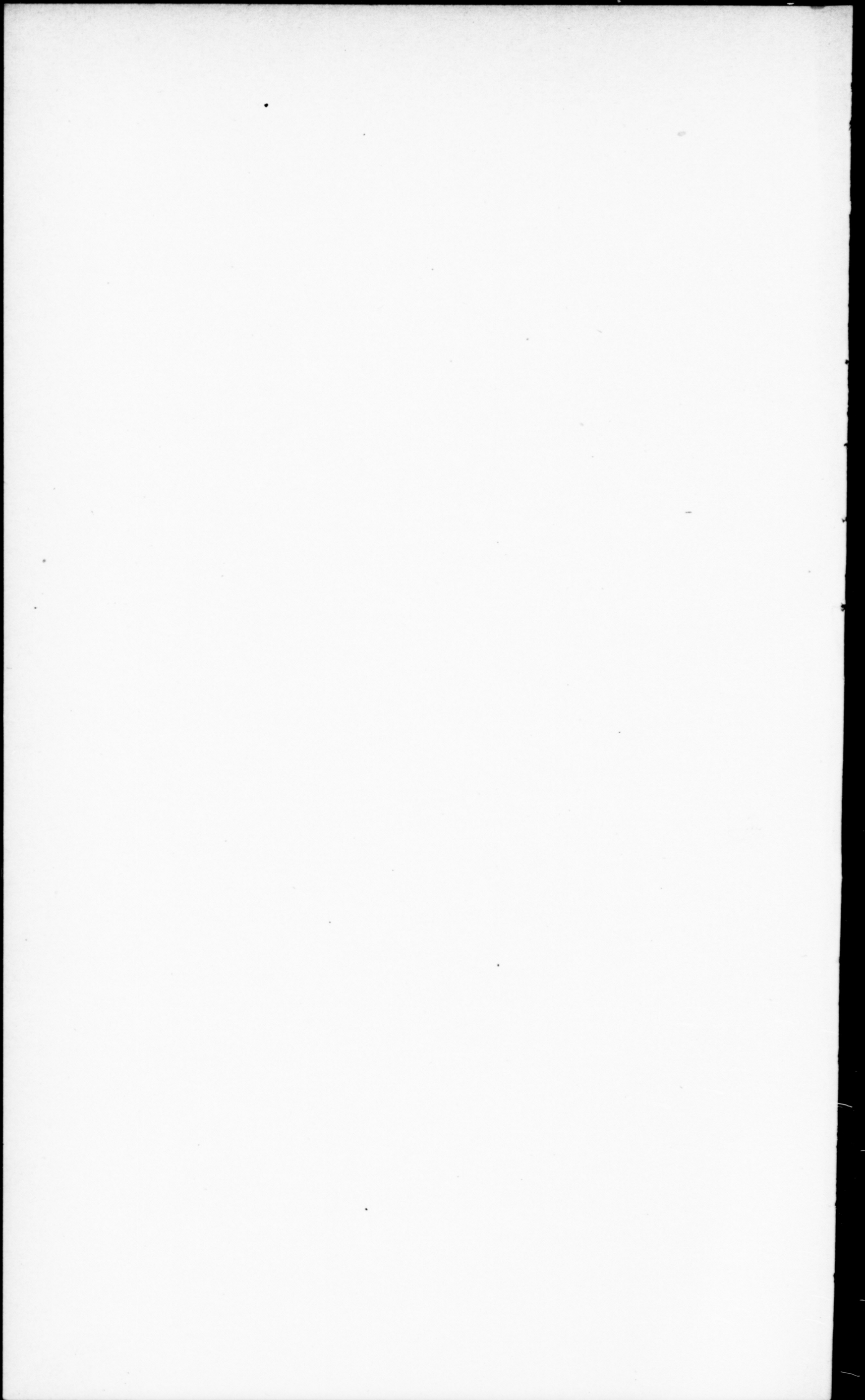
Now comes Chancy O. Howard, appearing specially for the purpose of answering the rule to show cause herein issued on the sixth day of May and not appearing generally, or admitting the jurisdiction of this Court, and for answer to said rule says:

That he is advised and believes that the Court has no power to grant any of the prayers of the plaintiff on which the said rule was issued because your respondent is not a party to the original suit filed herein and is not properly before the Court. Your respondent has been made a party to a supplemental bill filed herein. Said supplemental bill prays for all of the relief that is attempted to be secured under the said rule and has never been disposed of although an answer has been filed thereto. And therefore your respondent is advised and believes that this rule is inoperative.

Wherefore your respondent prays that the said rule be hence dismissed.

CHANCY O. HOWARD, *Respondent*,
By NEALE & ENGLAND.

[Endorsed:] January Term, 1914. No. 2610. Chancy O. Howard, Appellant, vs. Charles J. Cassidy Company, Inc., a Corporation, Appellee. Addition to Record per Stipulation of Counsel. Court of Appeals, District of Columbia. Filed Dec. 6, 1913. Henry W. Hodges, Clerk. William J. Neale, Attorney and Counsellor at Law, 612 F Street Northwest, Washington, D. C. Rooms 16 and 17 Ralston Building.



COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

DEC.-20-1913

Henry W. Hodgson
Clk.

In the Court of Appeals
OF THE DISTRICT OF COLUMBIA.

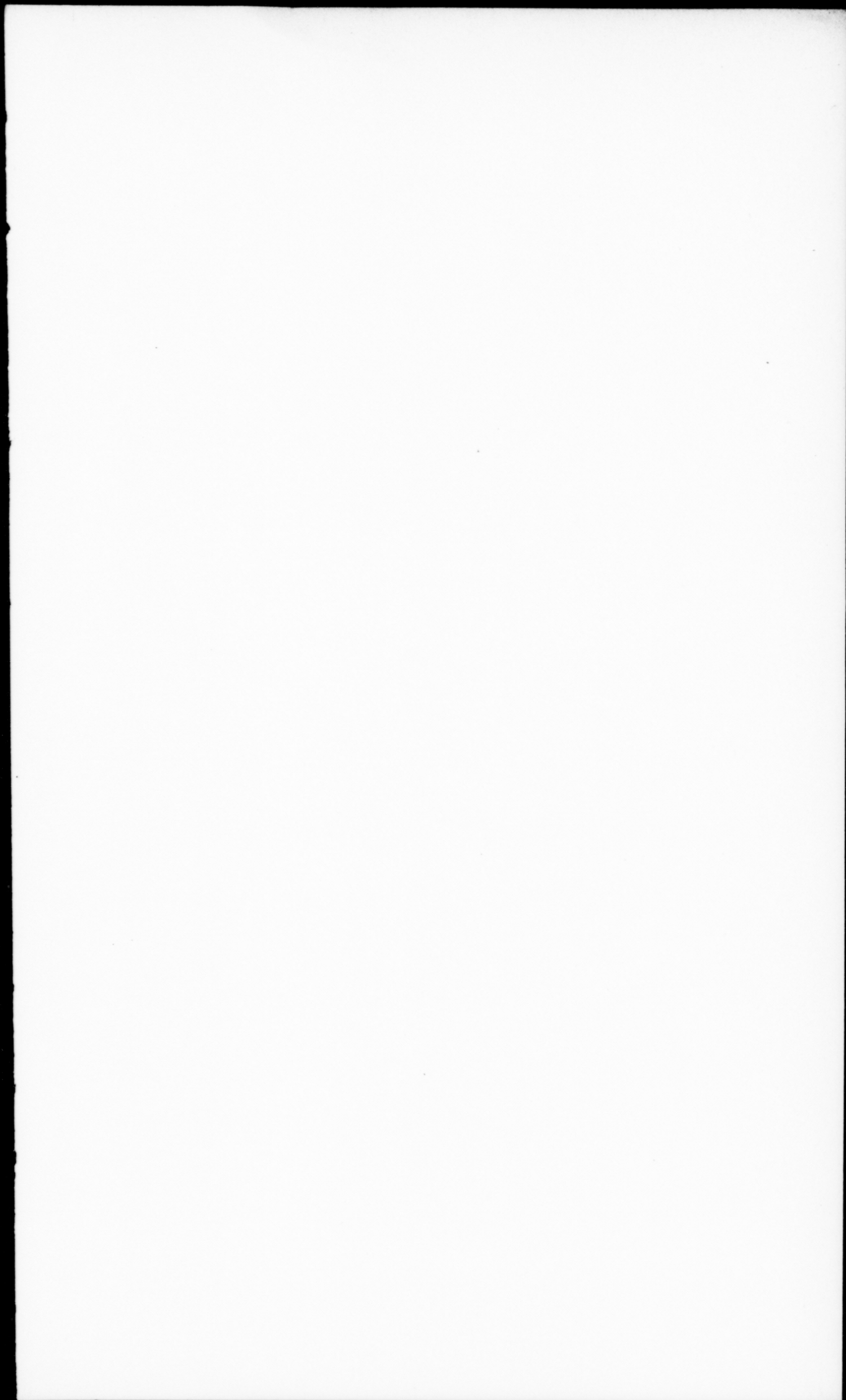
JANUARY TERM, 1914.

No. 26,010.

CHANCEY O. HOWARD, APPELLANT,
vs.
CHARLES J. CASSIDY COMPANY, INC.,
APPELLEE.

BRIEF FOR APPELLANT.

WM. J. NEALE,
JAMES N. ENGLAND,
Attorneys for Appellant.



In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1914.

No. 26,010.

CHANCEY O. HOWARD, APPELLANT,

vs.

CHARLES J. CASSIDY COMPANY, INC.,
APPELLEE.

BRIEF FOR APPELLANT.

This case comes into this court on appeal from a decree of the Supreme Court of the District of Columbia, holding an equity court.

Statement of Facts.

The original bill in this cause was filed by the Charles J. Cassidy Company (a corporation), against the Gettysburg Battle Picture Association (a corporation), praying for the appointment of a receiver and other general relief, which bill is set forth on page 10 of the record.

Subsequent to the filing of this bill a decree appointing Homer T. Booth receiver for the Battle Picture Association, was passed by the court below. The appellant Howard was not made a party to the original bill; and thereafter on the 11th of December, 1912, a rule was issued against this appellant, which is set forth on page 14 of the record, directing him to show cause "why he should not turn over to said receiver the moneys

of the Gettysburg Battle Picture Association; in the said petition alleged to have been wrongfully diverted by him." To this rule the appellant Howard appeared specially, filed his answer on December 17, 1912, which is set forth on page 18 of the record. Upon the coming into court of this answer the cause was referred to the auditor with instructions "to ascertain and report to this court as to the disposition of the assets of the defendant corporation, and by whom and to whom the same were disposed of."

While the matter was pending before the auditor the appellee filed a supplemental bill making the appellant Howard a party thereto, which bill is set forth on pages 2 and 3 of the record, same having been filed on January 18, 1913.

On February 11, 1913, the defendant Howard filed his answer to the supplemental bill, which answer is set forth on pages 4, 5, and 6 of the record. It will be noted that the appellant Howard in answering the rule issued against him on December 11th appeared specially for that purpose.

At page 26, under the heading of "Memorandum," it will be seen that the defendant Howard appeared before the auditor specially. The auditor filed his report in this cause on March 10, 1913, after the defendant Howard had answered the supplemental bill. It will therefore be seen that the cause was before the auditor upon the original bill to which Howard was not a party and was never re-referred to the auditor after he had been brought into court.

After the filing of the auditor's report and after the filing of the answer of the defendant Howard to the supplemental bill which was then pending before the court, a rule was issued against the defendant Howard to show cause why a judgment should not be given against him for the amount of money alleged to be due by him

to the Picture Association under the auditor's report, to this rule the defendant Howard filed his answer (this answer was inadvertently left out of the record and has subsequently been printed by stipulation of counsel as a part of the record). It will be noted from this answer that the defendant Howard denied the jurisdiction of the court to enter a judgment against him on said rule, for the reason therein stated, that he was not a party defendant to the original bill under which the reference was made, and that he had filed his answer to the supplemental bill which was still undisposed of. Overruling these objections, the learned trial justice, on May 20, 1913, passed a decree in its terms absolutely final, entering judgment against the defendant Howard for the sum of five thousand, six hundred and eighty-eight dollars and seventy-seven cents (\$5,688.77), while his rights in said cause were still pending under the supplemental bill, and undisposed of, and from this decree the defendant Howard brings his appeal to this court.

ARGUMENT.

The sole question in this case is did the court below have power to enter a decree, final and absolute in its effect, upon a rule to show cause when the subject-matter of the cause was pending for a hearing upon the merits.

The defendant Howard was not a party to the original bill and therefore was not before the court when the cause was referred to the auditor. The reference to the auditor being made upon the original bill (to which he was not a party), he could not except to the auditor's report. The finding of the auditor being the basis upon which Howard was made a party to the supplemental bill, and having answered that bill he was entitled to a trial upon the merits before a decree could be entered

against him. To hold to the contrary would be the denial to a party litigant of his day in court. When a defendant to a bill in equity is called into court and directed to answer a bill can it be said that the court has power to deny him the benefit of his answer and deprive him of taking proof in support thereof by a summary proceeding upon a rule to show cause?

We submit that such a proceeding is foreign to our system of jurisprudence, and a violation of the elementary principles of equity practice.

The question at issue in this cause is of such an elementary nature that it has, so far as we can ascertain, been given no consideration in the text books, much less by the courts in adjudicated cases. To follow the action of the trial court would certainly revolutionize in a most radical way the well-established rules of equity procedure, do away entirely with the answer, and permit of a final determination of all causes upon the bill and rule.

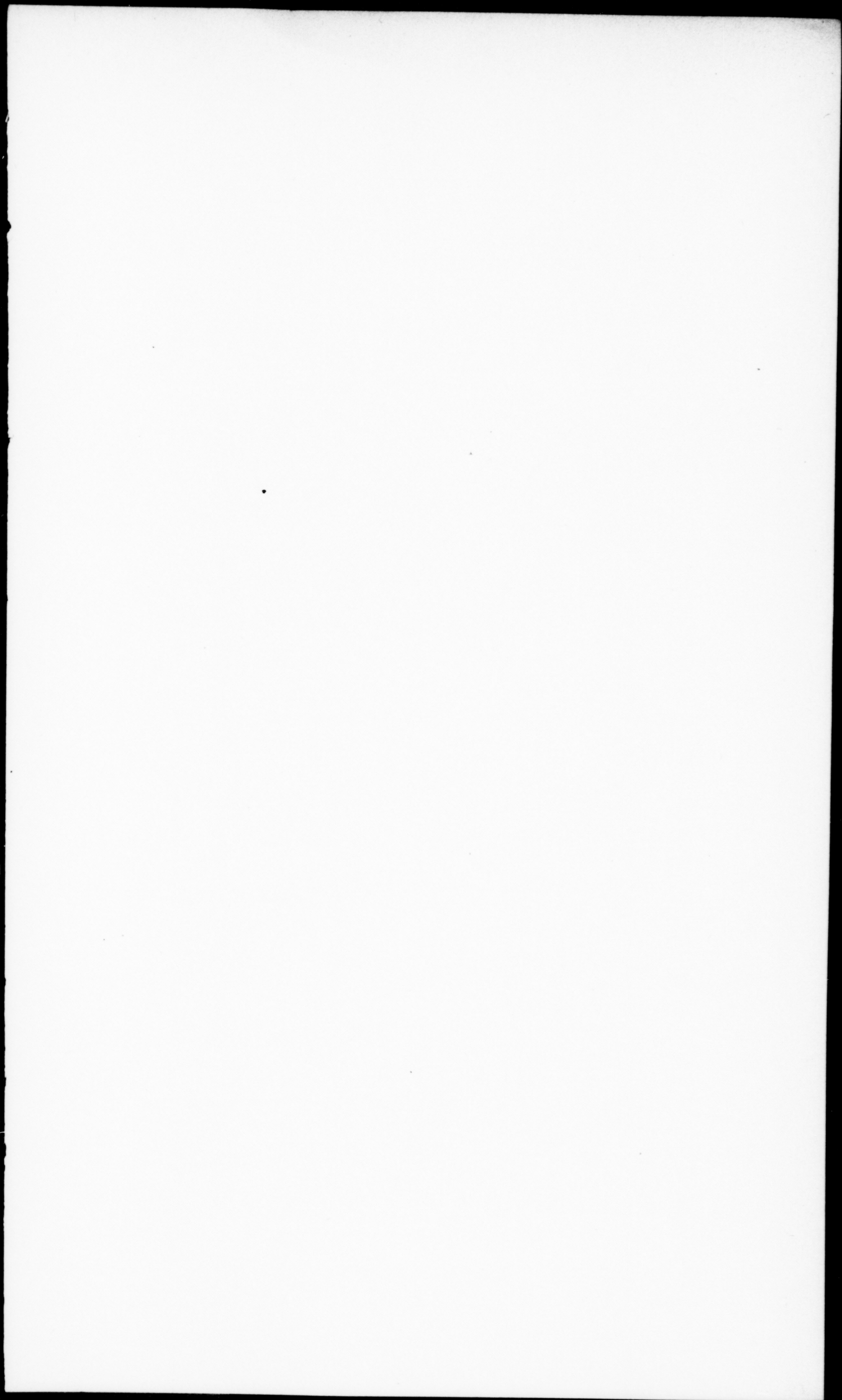
We take it that the rule to show cause is simply a quasi form of pleading brought into use for the purpose of determining interlocutory questions necessary to be settled in order to preserve the status of the parties or the subject-matter in dispute pending a hearing upon the merits.

Analogous to the questions here in controversy, is the case of *Washington Brewing Co. vs. Cosgrove*, 34 Washington Law Reporter, 132, decided by the Supreme Court of the District of Columbia.

Without burdening the court with unnecessary argument upon a matter so elementary, we submit that a bare statement of the facts in this case alone will warrant the court in reversing the decree.

Respectfully submitted.

WM. J. NEALE,
JAMES N. ENGLAND,
Attorneys for Appellant.



COURT OF APPEALS
~~DISTRICT OF COLUMBIA~~
FILED

JAN-9--1911

IN THE

Henry W. Hodges.
 clerk.

Court of Appeals, District of Columbia

No. 2610.

CHANCEY O. HOWARD, *Appellant,*

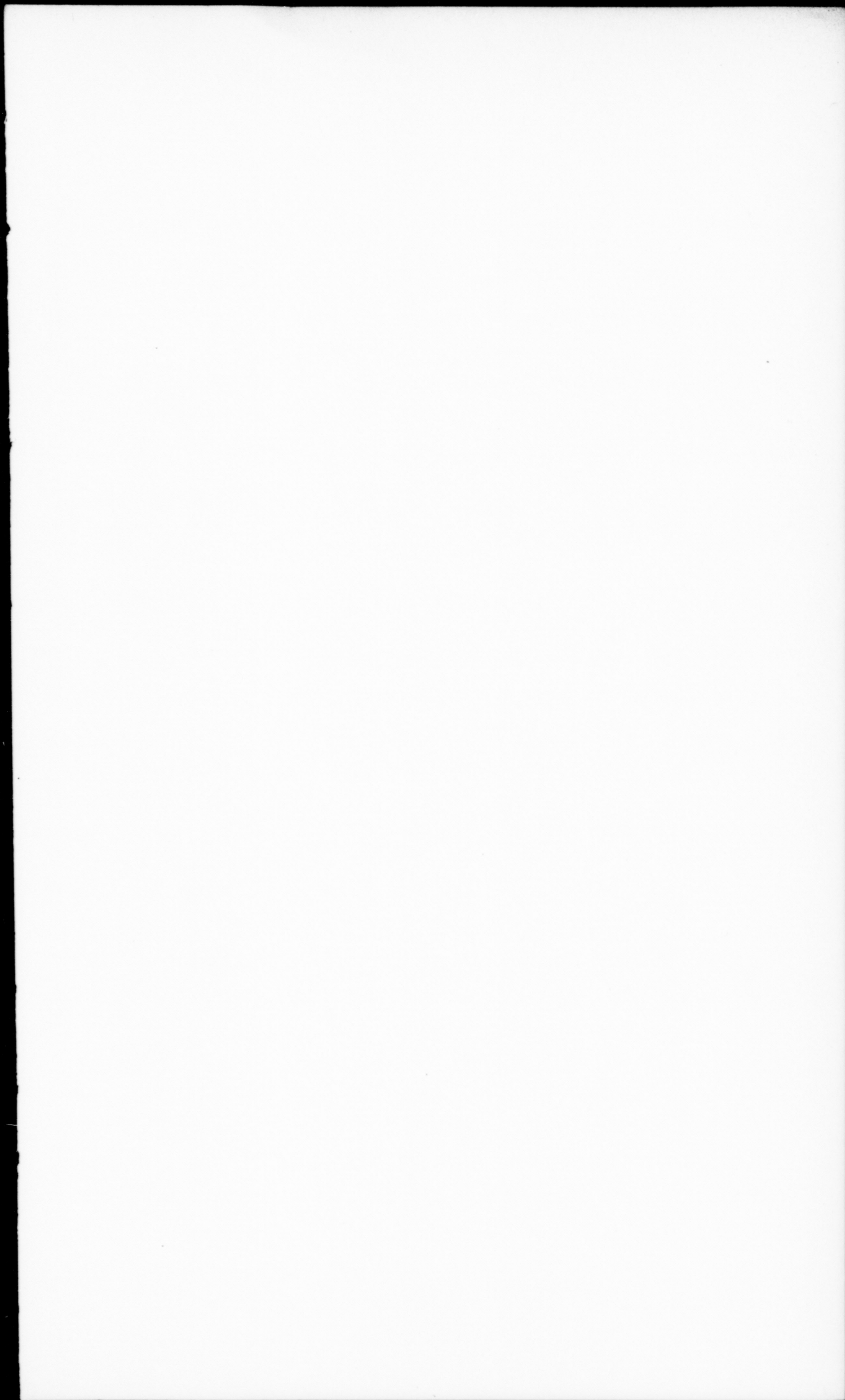
vs.

CHARLES J. CASSIDY COMPANY, INC., A CORPORATION.

BRIEF FOR APPELLEE.

A. E. L. LECKIE,
JOSEPH W. COX,
Attorneys for Appellee.

JOHN A. KRATZ
J. T. SHERIER,
Of Counsel.



IN THE
Court of Appeals, District of Columbia

No. 2610.

CHANCEY O. HOWARD, *Appellant*,

vs.

CHARLES J. CASSIDY COMPANY, INC., A CORPORATION.

BRIEF FOR APPELLEE.

The appeal in this case is from a decree of the Supreme Court of the District of Columbia awarding a personal judgment against Chancey O. Howard in favor of the Receiver of the Gettysburg Battle Picture Association. The only error complained of is that the Court below had no power to enter the decree "upon the rule to show cause when the subject-matter of the cause was pending for a hearing upon the merits." To understand the nature and effect of the decree appealed from it is necessary to review briefly the proceedings theretofore had in the case.

STATEMENT OF CASE.

The original bill (R., 10-11) was filed against the Gettysburg Battle Picture Association by the Charles J. Cassidy

Company, one of its creditors and set out that the affairs of the corporation had been so grossly mismanaged that the corporation was insolvent; that the former treasurer of the corporation (the appellee herein) refused to give up or surrender the treasurer's book to the then present treasurer; and that the corporation itself desired to have a receiver appointed as shown by a certified copy of a resolution of its Board of Directors annexed to the bill.

The Court having appointed Homer T. Booth receiver (R., 12), he filed in the cause a petition setting out among other things that out of the sum of about \$13,000.00 which had been paid in for the express purpose of constructing a building at Gettysburg, Pennsylvania, \$8,000.00 had been wrongfully and improperly drawn from the treasury of the company and turned into the hands of its officers who held and concealed it or had converted the same to their own use; that the sum of about \$1,950.00 had gone to the appellant, Chancey O. Howard, and a further sum of about \$4,500.00 had been apparently turned over to the Auto Delivery Company, a corporation owned and controlled by said Howard, which had been used by him merely as a conduit to convey and transfer to himself and to conceal the moneys of the said association. The petition prayed that the officers, Howard, Scott and Turner, be required to surrender and turn over any moneys which they had concealed, and a rule to show cause was issued requiring them to answer the petition and to show the disposition made by each of them of the moneys they had so received (R., pp. 12-14).

Each of the said officers appeared and answered the rule. Turner, the secretary, among other things set out that Howard had been in full charge of the corporation; that he as secretary took his instructions from Howard absolutely, that when he questioned the authority of Howard to make ad-

vances, Howard had informed him that he had such authority and that the funds used could be replaced by him from a commission which it was understood he was to receive when the picture, for which a building was to be constructed at Gettysburg, was disposed of. (Rec., 16.) Scott, the president, answered substantially to the same effect and further stated that when he had questioned Howard's conduct and the payments that had been made, Howard informed him that he controlled the majority of the stock of the corporation, and would call a meeting of the stockholders to confirm all that had been done and give the officers a clear sheet, but that he having found out that a wrong had been done refused to call the meeting, and on the advice of counsel aided in bringing the condition of the corporation to the attention of the court. (Rec., 16-17.) The appellant, Howard, in his answer, asserted that all the money paid to the Gettysburg Battle Picture Association, had been expended for the sole purpose of furthering the aims and purpose of the said corporation, and prayed that the cause be referred to the auditor of the court for an audit and accounting of the books of said company and a determination of its condition and affairs. (Rec., pp. 18-20.)

Thereupon the cause was referred to the auditor; and after numerous sessions, at all of which the appellant, Howard, appeared and participated, the auditor on March 10, 1913, filed his report (Rec., pp. 21-26), in which the allegations of the petition were found to be fully sustained and which shows the sum of \$1,623.00 was personally taken by Howard and the sum of \$4,751.67 had been unlawfully paid over by him to the Auto Delivery Company, in effect payment to Howard himself.

In the meantime, on January 18, 1913, while the cause was pending before the auditor, a supplemental bill was filed (Rec., pp. 2-3), making Howard and the Auto De-

livery Company parties to the cause, setting out, among other things, that moneys of the Gettysburg Battle Picture Association had been misappropriated and disposed of by Howard as treasurer to his own use, and to the use of the Auto Delivery Company, over which he exercised exclusive control; and praying that Howard and the Auto Delivery Company be required to account for and pay over all moneys received from the Gettysburg Battle Picture Association, that the proceeds of the property held in the name of the Auto Delivery Company and purchased with the funds of the Gettysburg Battle Picture Association be turned over to the receiver, and that judgment be decreed in favor of the Gettysburg Battle Picture Association or its receiver, against Howard, for such sum as should be found due from him to the Association.

The appellant, Howard, on the 11th day of February, 1913, answering the supplemental bill (Rec., pp. 4-6), stated among other things, that he was ready to submit to judgment for such sums as were loaned or advanced to him in his personal capacity, if the court should sustain the appointment of the receiver, the validity of which he questioned, because he was on the 4th day of December, 1912, a director in the defendant corporation, and was not given notice of the meeting held on that date, at which the resolution was passed requesting the appointment of a receiver for the Association. (In his answer to the rule to show cause filed December 5, 1913, he had stated that he had resigned as a director on the 3rd day of December, 1913. (R., p. 19.)) He averred that there had been no wrongful appropriation of the moneys of the defendant corporation.

A general replication was filed to the answer on April 28, 1913. (R., 27.)

On May 6, 1913, after the report of the auditor had been filed and approved by the court, the receiver filed a report

(R., pp. 27-28), and on the same date also filed a petition (R., p. 29), in which he prayed that a decree for judgment be entered against the officers of the defendant corporation in accordance with the findings of the auditor's report, and that a rule be issued requiring them to appear and show cause, if any they might have, why the prayer of the petition should not be granted.

Thereupon all of the said officers answered the said rule (R., p. 7, and addition to record by stipulation of counsel), Howard making only one objection, namely, that the court had no power to grant any of the prayers of the petition because he had been made a party by the supplemental bill which had not been disposed of and which prayed for the relief attempted to be secured by the rule. After full hearing and argument the court then passed the decree appealed from, dated May 20, 1913 (R., p. 7), "upon consideration of all and singular the proceedings had" in said cause, by the terms of which, judgment is given against Howard for the sum taken by him personally, \$1,623.00, plus the amount turned over to the Auto Delivery Company, \$4,751.60, less the amount which had come to the receiver from the receiver of the Auto Delivery Company, \$685.83 (R., p. 28).

ARGUMENT.

In view of the proceedings had in the case, it is believed that there can be no doubt that the court had authority to pass the decree against Howard; and that the proceedings under the receiver's petitions were alone sufficient to authorize the decree.

In answer to the rule to show cause issued upon the receiver's first petition, Howard appeared, and submitted himself to the jurisdiction of the court by answering the rule and by requesting a reference to the auditor (R., pp. 18-

20). He appeared before the auditor, participated in the hearings and acquiesced in the auditor's report by allowing it to be confirmed without objection.

The said first petition, which was filed December 11, 1912, prayed that the officers be required to turn over to the receiver the moneys of the Gettysburg Battle Picture Association which they had unlawfully taken. The receiver's second petition filed May 6, 1913, after the auditor's report had been approved, showed that the officers were unable to return to the receiver the moneys which they had unlawfully received and disposed of, as shown by the auditor's report, and prayed for a decree for judgment against them personally. In answer to the rule to show cause issued upon the second petition Howard did not contend that the auditor's report is unjust, or that legally he is not liable for the amount of the judgment; he made no claim that he had other evidence to offer than that taken before the auditor, or that a different result would or could be obtained upon a hearing in any other manner.

In short, the answer upon which the appeal is based, sets up a pure technicality without even a suggestion that injustice would be done by the granting of the relief prayed for; and this in a cause in which he had received notice of the proceedings, had duly appeared, had asked that the reference be made to the auditor, and had offered testimony and submitted to the hearing before the auditor.

In *Brandt v. Allen*, 76 Iowa, 50, 1 L. R. A., 653, it was held that a receiver of a corporation, appointed in a suit brought for that purpose, may maintain a summary proceeding entitled in the original suit to compel officers of the company to surrender assets which they are charged with concealing.

In that case, the defendants in their answer to the petition specifically claimed that they were not parties to the suit so as to affect them or property claimed by them, and

objected to the jurisdiction of the court on that ground. In disposing of the objection, the court said:

“Defendants had notice of the proceedings, appeared, filed their answer, offered testimony, and submitted to a hearing by the court. We conclude, therefore, that the objections of defendants to the jurisdiction of the court were not well founded.”

See 3 Cyc., 514-520.

It is submitted, therefore, not only that the receiver properly proceeded by ancillary petition, but also that even if the proceeding had been irregular the appellant waived the irregularity by appearing and submitting to the jurisdiction of the court.

Special precaution, however, was taken in this case, to prevent even the appearance of any irregularity in the proceedings, so far as Howard was concerned. After he had appeared and submitted to the jurisdiction of the court, under the receiver's first petition, he was regularly made a party to the proceedings by the supplemental bill, filed January 18, 1913, which specifically prayed that a judgment should be decreed in favor of the Gettysburg Battle Picture Association, or its receiver, against Chancey O. Howard for such sums as may be found due from him to said Association or its receiver. (R., pp. 2-3.)

On February 11, 1913, Howard answered the said supplemental bill and a general replication was thereafter filed. The proceedings before the auditor at which Howard appeared, in which he participated, and which were had upon his specific request, investigated and determined all the facts involved in the supplemental bill and answer thereto or necessary to the relief sought thereby. At the time the auditor's report was filed Howard was a formal party to the cause and had answered the supplemental bill. Neither

then nor at any time since has he questioned the correctness or justice of the auditor's report. It would seem to have been utterly useless to take other testimony or to have other hearings in the case, especially when Howard in answer to the rule to show cause why judgment should not be given against him in accordance with said report, made no claim or suggestion that judgment should or could rest upon any other basis. That the supplemental bill and answer form part of the proceedings upon which the decree against Howard is based is shown by the decree itself, which recites that,

"This cause came on to be further heard at this term, and was argued by counsel; thereupon upon consideration of all and singular the proceedings had herein * * * it is adjudged, ordered and decreed," etc.

We have then in this case a bill regularly filed and answered by the defendant; supported by testimony taken in the cause, upon the defendant's request, in his presence and with his participation, upon which findings had been regularly made by the court and acquiesced in by the defendant; and, after a full hearing and argument upon all proceedings had in the cause, a final decree as to which there is not even a suggestion on the record that it is in any respect unjust or inequitable.

It is, therefore, respectfully submitted that the decree should be affirmed.

A. E. L. LECKIE,
JOSEPH W. COX,
Attorneys for Appellee.

JOHN A. KRATZ
J. T. SHERIER,
Of Counsel.

